

In the United States Court of Federal Claims

No. 09-262C

(Filed August 18, 2009)

(Not for Publication)

MARK A. STANLEY,

Plaintiff,

v.

THE UNITED STATES, et al.,

Defendants.

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ORDER OF DISMISSAL

Plaintiff pro se Mark Stanley alleges a variety of claims arising from his incarceration by the California Department of Corrections & Rehabilitation. Plaintiff names as defendants the United States, the State of California and various state officials. He requests compensatory damages and injunctive relief pursuant to various statutes as well as the constitutions of the United States and California. The Government seeks dismissal on the grounds that this Court lacks subject matter jurisdiction over Plaintiff's claims. Because Plaintiff's claims fall outside this Court's jurisdiction, the Government's motion is **GRANTED**, and Plaintiff's complaint is **DISMISSED**.

Background¹

Plaintiff alleges that his due process rights have been violated because he is currently incarcerated by the California Department of Corrections and Rehabilitation as a result of a "false arrest." Compl. at 1. Plaintiff avers that his imprisonment is therefore akin to "involuntary

¹ The following background is derived from Plaintiff's complaint, and should not be construed as findings of fact.

servitude,” and that his due process rights have been violated. Id.²

Following his initial imprisonment at “CMC-West,” a California State correctional facility, Plaintiff was transferred to “CMC-Vacaville,” another state correctional facility. Id. at 21. Plaintiff asserts that he did not agree to this transfer and that this transfer has resulted in an “irreparable” position,” thereby causing him “mental distress.” Id. at 22-23. Plaintiff alleges that the State of California, the California Department of Corrections and Rehabilitation, a warden, several prison guards, and other prison personnel were responsible for his allegedly unlawful transfer. Id. at 2, 4-5, 9, 15-18. Although Plaintiff’s complaint is difficult to discern, it appears that Plaintiff also alleges that these parties engaged in fraudulent and criminal acts. Id. at 2-4, 9-10.

Although the nature of the alleged wrongdoing is not entirely clear, Plaintiff alleges that he was subject to “sexual harassment” while incarcerated Id. at 16-18. Further, Plaintiff alleges that he was somehow wronged by disciplinary and administrative actions of the prison staff, citing their “changing television channel for no apparent or logical reason.” Id. at 16 (emphasis omitted); see also id. at 16-18, 22. Plaintiff further claims that these acts were made possible by the negligence of the “inmate staff” and administration, who in his view have a “caretaker’s liability.” Compl. at 9, 19. Plaintiff also alleges claims against the State of California for alleged violations of state statutes. Id. at 2, 18-20.

As a result of the alleged occurrences, Plaintiff argues that he should be “compensated via Constitutional, Civil and Commercial statutes.” Id. at 23. Plaintiff requests that he be released from confinement and seeks damages for his pain and suffering due to violations of his “Constitutional right not to be placed under threat, duress and coercion.” Id. at 4; see also id. at 26.

Discussion

Subject matter jurisdiction must be established at the outset of any case before the Court proceeds to the merits of the action. See Hardie v. United States, 367 F.3d 1288, 1290 (Fed. Cir. 2004); BearingPoint, Inc. v. United States, 77 Fed. Cl. 189, 193 (2007) (citing Steel Co. v. Citizens for a Better Env’t, 523 U.S. 83, 88-89 (1998)). “If the Court finds that it lacks jurisdiction over the subject matter, it must dismiss the claim.” Naskar v. United States, 82 Fed. Cl. 319, 320 (2008) (internal quotation omitted). Plaintiff bears the burden of establishing the Court’s jurisdiction. Id. (citing Reynolds v. Army & Air Force Exch. Serv., 846 F.2d 746, 748 (Fed. Cir. 1988)). When considering a motion to dismiss for lack of subject matter jurisdiction, the Court will accept the complaint’s undisputed allegations as true and construe the complaint in a manner favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). Complaints drafted by pro se litigants are held to “less stringent standards than formal pleadings drafted by lawyers.” Naskar, 82 Fed. Cl. at 320 (quoting Haines v. Kerner, 404 U.S. 519, 520 (1972)). However, this latitude does not allow

² Plaintiff also refers to his imprisonment as “[p]eonage (a form of involuntary servitude).” Compl. at 1.

a pro se plaintiff to subvert the Court's jurisdictional requirements. See Henke v. United States, 60 F.3d 795, 799 (Fed. Cir. 1995). Pro se plaintiffs still bear the burden of establishing the Court's subject matter jurisdiction. Tindle v. United States, 56 Fed. Cl. 337, 341 (2003).

This Court's jurisdiction is set forth in the Tucker Act, 28 U.S.C. § 1491, which confers jurisdiction upon the United States Court of Federal Claims over cases in which a plaintiff has a claim against the United States for money damages. The Tucker Act states that this Court "shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort." 28 U.S.C. § 1491(a)(1). The plaintiff must demonstrate that the source of substantive law he relies upon for his claim mandates compensation by the Federal Government for damages. United States v. Mitchell, 463 U.S. 206, 216-17 (1983). However, the Tucker Act, by itself, "does not create any substantive right enforceable against the United States for money damages." United States v. Testan, 424 U.S. 392, 398 (1976). Accordingly, a plaintiff must identify a separate Constitutional provision, statute, or regulation which if violated, provides for a claim for money damages against the United States. Fisher v. United States, 402 F.3d 1167, 1172 (Fed. Cir. 2005) ("[A] plaintiff must identify a separate source of substantive law that creates the right to money damages," i.e., a source which is "money mandating."); James v. Caldera, 159 F.3d 573, 580 (Fed. Cir. 1998). A statute provides for monetary damages against the United States if it is "reasonably amenable to the reading that it mandates a right of recovery in damages." United States v. White Mountain Apache Tribe, 537 U.S. 465, 473 (2003). In this instance, Plaintiff fails to demonstrate that this Court has jurisdiction over any of his claims.

Plaintiff cites various provisions of the Uniform Commercial Code throughout his complaint, but fails to allege facts establishing either a statutory violation within this Court's jurisdiction or the existence of an implied or express contract between him and the United States government. Specifically, Plaintiff's complaint does not allege the presence of "a mutual intent to contract including an offer, an acceptance, and consideration." Trauma Serv. Group v. United States, 104 F.3d 1321, 1325 (Fed. Cir. 1997). Accordingly, Plaintiff has failed to state a contract claim within this Court's jurisdiction. See id. ("To show jurisdiction in the Court of Federal Claims, [the plaintiff] must show that either an express or implied-in-fact contract underlies its claim.").

Moreover, as explicitly stated in the Tucker Act, tort claims do not fall under the umbrella of this Court's jurisdiction. 28 U.S.C. § 1491. Plaintiff's claims of false arrest, negligence, and harassment are also tort claims that do not fall within this Court's jurisdiction. See Brown v. United States, 105 F.3d 621, 623 (Fed. Cir. 1997) ("Because [Plaintiffs' claims] . . . are grounded upon fraud, which is a tort, the court lacks jurisdiction over those claims."); Fullard v. United States, 77 Fed. Cl. 226, 230 (2007) ("This court lacks jurisdiction over plaintiff's conspiracy claim because the Tucker Act specifically states that the Court of Federal Claims does not have jurisdiction over claims 'sounding in tort.'"). Similarly, like tort claims, this Court lacks jurisdiction to adjudicate the criminal conduct alleged by Plaintiff. See Campbell v. United States, 229 Ct. Cl. 706, 707 (1981).

To the extent that Plaintiff claims that he has been subjected to “sexual harassment,” such claims are governed by Title VII of the Civil Rights Act of 1964 (“Title VII”). See Meritor Sav. Bank, FSB v. Vinson, 477 U.S. 57, 63-65 (1986). This Court does not have jurisdiction to entertain claims under Title VII. Zhengxing v. United States, 71 Fed.Cl. 732, 739 (2006); Taylor v. United States, 54 Fed. Cl. 423, 425 (2002) (The Court's jurisdiction over discrimination claims is limited by Title VII, which . . . places jurisdictional review in the federal district courts.). Alternatively, if this Court construes Plaintiff’s claims of what he characterizes as “sexual harassment” as tort claims, the claims fall outside this Court’s jurisdiction. See Brown, 105 F.3d at 623.

Further, Plaintiff’s claims against the State of California, law enforcement personnel, the California Department of Corrections and Rehabilitation, and any other party other than the United States must be dismissed because this Court lacks jurisdiction over these entities and individuals. See, e.g., Stephenson v. United States, 58 Fed. Cl. 186, 190 (2003) (“[T]he only proper defendant for any matter before this court is the United States, not its officers, nor any other official.”).

To the extent that Plaintiff alleges violations of his First Amendment, Due Process, and Equal Protection rights, these claims do not arise under a money-mandating Constitutional provision and also lie outside this Court’s jurisdiction. When filing suit against the United States, “[the] Court’s jurisdiction only extends to those provisions of the Constitution which are money-mandating, and does not include claims based on the First Amendment, the Due Process Clause, the Eighth Amendment, or the Equal Protection Clause.” Cosma-Nelms v. United States, 72 Fed. Cl. 170, 172 (2006); accord LeBlanc v. United States, 50 F.3d 1025, 1028 (Fed. Cir. 1995).

Finally, Plaintiff asks this Court to order the State of California to release him from prison. It is well established that this Court lacks authority to grant such equitable relief. See Bowen v. Massachusetts, 487 U.S. 879, 905 (1988); see also Richardson v. Morris, 409 U.S. 464, 465 (1973); Glidden Co. v. Zdanok, 370 U.S. 530, 557 (1962); Wheeler v. United States, 11 F.3d 156, 159 (Fed. Cir. 1993). Moreover, as previously mentioned, Plaintiff cannot sue the State of California in this Court. See Stephenson, 58 Fed. Cl. at 190.

Conclusion

For the foregoing reasons, Defendant’s motion to dismiss is **GRANTED**, and Plaintiff’s complaint is **DISMISSED** with prejudice. The Clerk is directed to enter judgment accordingly.

s/Mary Ellen Coster Williams

MARY ELLEN COSTER WILLIAMS

Judge